IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 328 of 1998

IN

WRIT PETITION NO.1758 OF 1997

1. The Cricket Club of India
Brabourne Stadium,
Dinshaw Wachha Road,
Bombay 400 020.

2. The Chief Executive & Secretary,
The Cricket Club of India,
Brabourne Stadium, Bombay-20.

3. Mr.R.N. Ranjan,
Chief Executive & Secretary,
Cricket Club of India,
Bombay 400 020. .. Appellants

versus

1. Mr.D.R. Shyam
10, Ahilya Pilot Bunder
Colaba, Mumbai 400 005.

2. Shri P.S. Ghose, Member
Industrial Court, Maharashtra
at Mumbai, having his office and
Court at Arun Chambers,
7th floor, Tardeo,
Mumbai 400 034. .. Respondents

...

Mr.S.S. Pathak for the appellant.

Ms.Manisha Veerkhare for the respondent.

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

DATED : 18th April 2007.

**ORAL JUDGEMENT:-** (Per R.M.S.Khandeparkar,J)

1. The appeal arises from the judgement dated 13th February 1998 passed in Writ Petition no.1758 of 1997. By the impugned judgement, the petition filed by the appellant against the judgement dated 25th September 1997 passed by the Industrial Court, Mumbai in Revision Application no.28 of 1997 has been dismissed. By the said order, the Industrial Court had allowed the Revision Application filed by the respondent herein against the judgement dated 30th November 1996 of the Labour Court in the Complaint no.205 of 1995. The said complaint was filed by the respondent alleging that appellant had engaged in unfair labour practice under items 1(a) (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the said Act").

2. The main grievance of the respondent was that, inspite of she being duly appointed and confirmed as House-keeper, her services were illegally terminated without any justification and

without holding any domestic enquiry and therefore, the appellant had engaged in unfair labour practice. The complaint was sought to be contested on behalf of the appellant mainly on the ground that the respondent was not an employee within the meaning of the said expression under the said Act. The Labour Court referring to the various duties which are required to be performed by the original respondent in the course of her tenure were of the supervisory and administrative nature, held that she was not the employee/workmen and therefore the complaint was dismissed. The matter was carried in Revision Application before the Industrial Court and the Industrial Court found the finding of the Labour Court on the point of the status of the original respondent is contrary to the materials on record and therefore on consideration of the evidence led by the parties held that the original respondent was the workman/employee and therefore entitled for the relief asked for and hence ordered reinstatement of the original respondent in the services with full backwages and continuity of service from the date of termination. The order was challenged in Writ Petition by the appellants without any success as the same was dismissed by the impugned order.

Hence, the appeal.

3. Relying upon the decisions delivered by the Apex Court and this court, learned advocate appearing for the appellant submitted that the Revisional Court in exercise of powers under section 44 of the said Act could not have reappreciated the evidence and if the finding of the Labour Court was found to be contrary to the materials on record while setting aside the same, Revisional Court could have at the most remanded the matter for consideration thereof by the Labour Court. He further submitted that there was no specific issue as regards the status of the original respondent framed by the Labour Court and therefore, once the Industrial Court had found that the materials on record disclosed the respondent to be the workman, it was necessary to remand the matter with the specific directions to frame an appropriate issue as regards the status of the original respondent. He further submitted that there was no prayer for reinstatement or for backwages made in the Revision Application by the respondent. Therefore, the revisional court could not have granted such relief.

In any case it is further contention on behalf of the appellant that the respondent could not have been granted full backwages in the absence of necessary evidence being led by the respondent that during the relevant period, original respondent was not gainfully employed elsewhere and the burden in that regard was squarely upon the original respondent which was not discharged by the original respondent. He has also further submitted that before ordering reinstatement in a proceedings under the said Act, the Industrial Court has not arrived at a finding that the appellant was engaged in unfair labour practice in terms of item 1(a) of the IV schedule and therefore in the absence of such finding, there was no occasion for the Industrial Court to order reinstatement of the original respondent.

4. Reliance is sought to be placed in the decision in **Kendriya Vidyalaya Sangathan & Anr. Vs. S.C. Sharma** reported in (2005) 2 Supreme Court Cases 363, **Bhavani Metal Works Vs. Pandurang R. Sawant & ors.** reported in 1990(1) CLR 147, **G.M. Haryana Roadways Vs. Rudhan Singh** reported in 2005(3) L.L.N. 754, **Narsinha Anant Joshi Vs.**

**M/s.Century Shipping & Anr.** reported in 1994 Mh.L.J. 1606, **The Raja Bahadur Motilal Poona Mills Ltd. Vs. Girni Kamgar Sanghatana & Anr** reported in 1985 (1) CLR 188, **United Ink & Varnish Co.Pvt. Ltd. Vs. Chandrashekhar Kuvre & ors.** reported in 2007 I CLR 503, **Permanent Magnets Ltd Vs. Vinod Vishnu Wani & Ors.** reported in 2002 (93) FLR 32, **Pepsico India Holdings (Private) Ltd. Vs. Noshir Elavia & Anr.** reported in 2002(2) L.L.N. 515**, Kirloskar Cummins Ltd. Vs. Subhash Shripati Darekar & Ors.** reported in 1997 I CLR 868, **Blue Star Ltd. Vs. Blue Star Workers Union, Mumbai-14 & Anr,** reported in 1997 II CLR 1018, **Bharat Forge Company Ltd. vs. A.B. Zodge & Anr.** reported in 1996 II CLR 345, **Pest Control (India) Pvt.Ltd. Vs. Pest Control (India) Pvt.Ltd. Employees' All India** reported in 1994 I CLR 230 and **Vilas Dumale Vs. M/s.Siporex India Ltd. & Anr.** reported in 1997(3) Mh.L.J. 792.

5. As regards the first contention about the scope of the jurisdiction of the Industrial Court while execising the powers under section 44 of the said Act, it is not in dispute nor can be disputed that the power under the said provision of law is in

the nature of revisional jurisdiction. It is settled law that as a normal rule the revisional court is not expected to reassess the evidence. However, there is an exception to this rule. When the finding arrived at by the Court of the Original Jurisdiction is found to be perverse or contrary to the materials on record, nothing prevents the revisional court from setting aside such finding and re-assessing the evidence on record in a case where undisputed materials on record are sufficient to dispose of the matter finally, and the remand of the matter would virtually result in keeping the matter lingering for no justification. In the case in hand, the Labour Court had arrived at a find that the original respondent was not a workman/employee on the ground that the nature of the duties performed by the original respondent disclosed the same to be of administrative or supervisory nature. In that connection, learned Advocate for the appellant also drew attention to some of the duties which were performed by the original respondent and they included the job of keeping control and supervision regarding the work of tailoring, maintenance of discipline amongst the staff of the Maintenance department working under the House

Keeper particularly attendance and behaviour of such workers, recommendation of leave of such employees etc. The Revisional Court however having found that the nature of the duty not only included the duties which are mentioned hereinabove, but also included the duties in the form of taking all the necessary steps required to be taken to avoid complaints from the occupants of the rooms in the club-house, to look after upkeepment and maintenance of the rooms in the club house, to check the rooms to verify the same, to look after upkeeping and maintenance of the club-house premises including the ladies room etc. held that the duties performed by the respondent disclosed that they were not in the nature of supervision or administration but actually involved work of a workman.

6. It is pertinent to note that the orders passed by the Industrial Court as well as by the learned Single Judge clearly disclose that there was a clear admission on the part of the appellant in the appointment letter itself regarding the nature of the duties to be performed by the original respondent and it clearly discloses applicability of the standing orders to the service conditions of the

respondent. Obviously therefore it discloses all the service conditions applicable to the workmen were applicable to the original respondent. This clear admission on the part of the appellant coupled with the evidence on record clearly discloses that the finding arrived at by the Labour Court regarding the status of the respondent not to be an employee or a workman was not only contrary to the materials on record but was perverse. Obviously, therefore, the Revisional Court was justified in interfering in the said finding and based on undisputed materials on record to arrive at a finding that the respondent was the employee/workman within the meaning of the said expression under the said Act and therefore, the complaint filed under the said Act was maintainable.

7. In the facts and circumstances of the case therefore, though in normal course, revisional court would not have been justified in re-assessing the evidence on record, in the peculiar set of the facts of the case in hand, we do not find any illegality committed by the revisional court in re-appreciating the evidence and that too based on undisputed materials on record.

8. As regards the contention about the absence of the issue on the point of the status of the original respondent, the judgement delivered by the Labour Court clearly discloses detail analysis of the evidence led by the parties. Besides, perusal of the pleadings of the parties and particularly of the appellant in their written statement, discloses a specific plea having been raised about the absence of relationship of employer-employee between the appellant and respondent. The judgement of the Labour Court discloses the analysis of the evidence which refers to the evidence led by the parties on the point of status of the respondent in relation to her employment with the appellant. Obviously, therefore, the parties had gone to trial with full knowledge about the case which each of them had to establish and knowing well the contentions which were raised by either of the parties in relation to the status of the respondent. Therefore, there was no scope for any surprise as such to either of the parties as to what issue the parties were required to deal with while leading the evidence. Therefore, even though there was no specific issue framed on the point of the status of the respondent by the

Labour Court, undisputedly, parties led evidence on the said issue and invited order of the Labour Court on the said issue and Labour Court did decide the said issue which was subject matter of the revision before the revisional court. Therefore there is absolutely no substance in the grievance regarding the failure of the Labour Court to formulate the issue on the point of status of the respondent in the matter.

9. As regards the third ground of challenge that the revisional court could not have itself decided the issue regarding the status and ordered reinstatement and at the most could have remanded the matter to the Labour Court, as already observed above, once it was found that the undisputed material on record apparently disclosed the status of the respondent to be that of an employee within the meaning of the said expression under the said Act and there being no other defence raised by the appellant in support of their decision to terminate the services of the respondent, we fail to understand what could have been the occasion for the Industrial Court to remand the matter to the Labour

Court and to keep the parties engaged in the litigation merely for the sake of the pleasure of the employer.

10. As regards the fourth ground of challenge regarding absence of the prayer for reinstatement and backwages in the revision application, it is not in dispute that such a prayer was found in the original application. The revision application arises from the order passed by the Court of Original Jurisdiction. The revision application arises on account of failure on the part of the Labour Court to appreciate the evidence in proper perspective and to arrive at a correct finding on the materials which were placed before it. In those circumstances, apart from the fact that the revisional proceedings under the said Act are in continuation of the original proceedings and in the facts and circumstances of the case it was apparent that in spite of undisputed materials available on record which would justify the order of reinstatement, the Labour Court had refused the same to the respondent. We therefore, find no illegality having been committed by the revisional court in the facts and circumstances of the case in granting the

relief of reinstatement with full backwages.

11. As regards the contention that merely because an employee succeeds in getting the order of dismissal set aside, the employee cannot claim full backwages in the absence of the employee establishing that during the relevant period, the employee was not gainfully employed elsewhere. Undisputedly, law in the regard is well settled. It cannot be disputed that it is necessary for the employee to establish that during the relevant period, that he or she was not gainfully employed elsewhere. However in the facts and circumstances of the case in hand, it was nobody’s case that during the relevant period, the respondent was gainfully employed elsewhere. Even in the Writ Petition before the learned Single Judge, there was no ground raised in that regard. The only ground which was raised was "that the learned Industrial Court has ex-facie erred in directing reinstatement of the 1st respondent with full backwages". Contention that the Court erred in ordering reinstatement with full backwages is different from the contention that no such order for payment of full backwages could have been granted in the

absence of evidence regarding fact that the employee was not gainfully employed elsewhere during the relevant period. Once no such ground was raised before the learned Single Judge, it is too late for the appellant to raise such a ground in the appeal. Even in the memo of appeal, there is no specific ground raised in that regard. Obviously, the arguments were sought to be advanced without even raising a specific ground on this point. At this stage, we have also to take note of the fact that the original respondent has already expired and no purpose would be served even if we remand the matter to the Labour Court at this stage.

12. The decision of the learned Single Judge in **Pest Control (India) Pvt.Ltd.** (Supra) is on the point that the revisional jurisdiction can be exercised only in the circumstances set out in section 44 of the said Act. The law on this point is well settled as already observed above.

13. **In Kendriya Vidyalaya Sanghathan** (Supra) the decision was on the point that initial burden to prove that the employee was not gainfully employed elsewhere during the relevant period lies upon the

employee. There is hardly any quarrel about this proposition and the law is well settled in this regard. However, the applicability of proposition depends upon the facts of each case. For the reasons referred above, this decision is of no help to the appellant to seek interference in the impugned order.

14. **In Bhavani Metal Works case** (supra), the learned Single Judge has held that the Labour Court did not frame proper issue nor recorded any finding about the inquiry proceedings and without arriving at any finding on this relevant aspect had disposed of the reference under the Industrial Disputes Act. The decision therefore, is of no help to the case in hand.

15. **In Haryana Roadway Vs. Rudhan Singh** (Supra) the decision is relating to daily wage workers and not in relation to the confirmed employees. Hence, not applicable.

16. **In Narsinha Anant Joshi's case**, the learned Single Judge held that the Labour Court was not justified in going into the merits of the case once

it has found that the appellant was not the workman.

17. **In Raja Bahadur Motilal Poona Mills Ltd,** learned Single Judge has held that there is a difference between an illegal act and an unfair labour practice and merely because an employer contravenes a provision of some Act or even indulges in an illegal act it cannot be said that he is indulging in unfair labour practice. One fails to understand the applicability of this rule to the facts in the case in hand. The Industrial Court on analysis of the materials on record has clearly found that the services of the respondent were terminated without disclosing any justification and without holding any enquiry. Undisputedly, the respondent was a confirmed employee. Being so, without following the procedure applicable to and in terms of the service conditions of the respondent and without taking recourse to the provisions of law applicable to the parties, there could not have been termination of service and therefore, the act of termination itself was victimisation which clearly fell within the parameters of the unfair labour practice as described under clause (1)(a) of Schedule IV of the said Act.

18. **In United Ink & Varnish Co.Pvt.Ltd**. (Supra) it was a case where termination was on the ground of misconduct. It was not a case where the services were terminated simplicitor without there being any misconduct on the part of the employee.

19. **In Permanent Magnets Ltd's case** (Supra), it was a case where the observations regarding the necessity of framing the issue was made with reference to the entitlement of the employer to lead evidence before the Labour Court once the latter find the domestic enquiry being vitiated.

20. **In Pepsico India Holdings (Private) Ltd's** case, it was a matter in relation to the unfair labour practice under item (9) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The decision was on the point that absence of service of charge-sheet or failure to hold domestic enquiry may attract the provisions of item (9) of Schedule IV of the said Act.

21. **In Kirloskar Cummins** case again it was a

case of reappraisal of evidence by the revisional court. That was a case where the revisional court had proceeded to exercise the revisional powers as if the revisional court was sitting in appeal over the order which was sought to be challenged by the party. In that connection, the learned Single Judge has observed that revisional court was not justified in reappreciating the evidence.

22. **In Blue Star Ltd's** case, the Industrial Court had held unfair labour practice was not proved and had ordered dismissal of the complaint. However at the same time, it gave directions to the Company to return the deducted wages. Obviously, the order was totally illegal. Once the complaint was dismissed, the Court could not have the jurisdiction to give any directions as such to the employer.

23. The decision of the Apex Court in **Bharat Forge Company Ltd's** case is on the point that in case the Tribunal comes to a conclusion that the finding in the enquiry was perverse, an opportunity should be given to the employer to establish the misconduct by leading evidence before the court.

24. **In Vilas Dumale's** case the learned Single Judge has held that the findings of the fact which were arrived by the Labour Court were neither perverse nor were based on any evidence and the view taken by the Labour Court was a possible view and therefore the Industrial Court could not have interfered in those finding in revisional jurisdiction. That is not the case in hand for the reasons stated above.

25. It is sought to be argued that there was no finding arrived at by the Industrial Court that the applicant had not engaged in unfair labour practice and therefore could not have ordered reinstatement of the respondent. Perusal of the judgement by the Industrial Court undoubtedly discloses that the Industrial Court after taking into consideration all the undisputed materials on record has held that the original respondent is an employee. It is also recorded that it is an undisputed fact that the respondent was duly appointed and was confirmed in the employment. It is also not in dispute that the termination order did not disclose any misconduct on the part of the original respondent. It is also not in dispute that no charge-sheet was served on the

respondent nor any domestic enquiry held. In the course of argument, the learned advocate appearing for the appellant has fairly submitted that the correspondence between the parties did not disclose that there was a demand by the workmen for increase in pay scale, but perhaps that could be a ground for termination of service. The fact remains that without any justification the order of termination was issued. The pleading in the written statement nowhere discloses any justification for order of termination of service of the respondent. Obviously, therefore, the victimization within the meaning of the said expression under item 1(a) of the IV schedule was apparent. Being so, merely because in so many words, the Industrial Court has not said that the appellant was engaged in unfair labour practice, that by itself, will not enure to the benefit of the appellant to seek interference of this court in the impugned order. Neither in the Writ Petition nor in the Memo of appeal there is any specific ground raised in that regard. On this ground also, there is no case made out for interference.

26. In the circumstances, therefore, we find no

case made out for interference. Hence appeal fails and is dismissed with costs. No order as to costs.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)